

Internal Revenue Service

memorandum

CC: [REDACTED]-TL-N-2196-99  
[REDACTED]

date: March 29, 1999

to: Chief, Examination Division

[REDACTED] District, [REDACTED]

ATTN: [REDACTED]

from: District Counsel

[REDACTED] District, [REDACTED]

subject: [REDACTED]

Effect of Issuance of Designated and Related  
Summons on Statute of Limitations

You have requested advice as to the impact that enforcement of the designated and related summonses issued to the taxpayer will have on the statute of limitations on assessment for the taxpayer's taxable year [REDACTED]. As we discussed with you at our meeting on Wednesday, March 24, 1998, we believe that the statute will not expire until (b)(7)a days after the taxpayer produces the summonsed documents relating to the [REDACTED] included in the samples provided to the taxpayer in February. (b)(7)a, (b)(5)(AC)

(b)(7)a, (b)(5)(AC)

FACTS

[REDACTED]'s [REDACTED] Form 1120 was filed on [REDACTED]. On [REDACTED], a designated summons under I.R.C. § 6503(j)(2) was issued to and served on the taxpayer seeking the tax preparation software used by the taxpayer in the preparation of its [REDACTED] Form 1120 (the "Designated Summons"). On [REDACTED], several related summonses under I.R.C. § 6503(j)(1)(A)(ii) were issued to and served on the taxpayer. The related summonses included, inter alia: (1) [REDACTED]

[REDACTED]

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The taxpayer only partially complied with the Designated and Related Summonses. Accordingly, on [REDACTED], a petition to enforce the Designated and Related Summonses was filed in the District Court for the District of [REDACTED] ([REDACTED]). That summons enforcement action was subsequently consolidated with summons enforcement actions seeking enforcement of (1) [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]. The Court's Order, however, did not dispose of the Related Summonses.

The taxpayer's principal defense to the Related Summonses was that much of the summonsed material [REDACTED]  
[REDACTED]. The taxpayer raised several other defenses, including, inter alia, that the summonses required the production of documents [REDACTED]. The taxpayer also sought a protective order respecting [REDACTED]  
[REDACTED]. On [REDACTED], the magistrate issued a Report and Recommendation rejecting the taxpayer's [REDACTED]  
[REDACTED]

The District Court subsequently issued an Order overruling Norwest's objections based on [REDACTED]  
[REDACTED]

Among the information which the taxpayer did produce in response to the [REDACTED] Financial Summons was a CD Rom which contained information on the [REDACTED] of each of the [REDACTED] companies with respect to which the summons sought information. Using information from the CD Rom, [REDACTED] was able to draw statistical samples of the [REDACTED] of [REDACTED] of the companies (a statistical sample could not be drawn for the [REDACTED] company, [REDACTED], because the population was too small). On [REDACTED], the Tax Division forwarded those statistical samples and a judgmental sample for [REDACTED] (collectively the "[REDACTED]") to the taxpayer along with a letter indicating that the United States was narrowing the scope of the information sought pursuant to the Financial Summons to records relating to the [REDACTED] included in the [REDACTED]. The letter also indicated that if

the taxpayer would provide the necessary information, the Service was willing to select statistical samples of [REDACTED] for the other entities for which [REDACTED] files had been summonsed and narrow scope of those summonses accordingly.

Pursuant to the magistrate's direction, the [REDACTED] filed a Proposed Report and Recommendation on [REDACTED], and a Proposed Order on [REDACTED], which set forth, inter alia, the materials with respect to which the United States was still seeking enforcement. Therein the scope of the documents sought was substantially narrowed. The proposed Order of [REDACTED] narrowed the records sought pursuant to the [REDACTED] Summons to those relating to the [REDACTED] identified in the [REDACTED]. The Summons was narrowed to [REDACTED]  
[REDACTED]  
[REDACTED]

On [REDACTED], the magistrate issued a second Report and Recommendation addressing the taxpayer's remaining arguments and recommending, inter alia, that the Related Summonses be enforced. The [REDACTED] Report and Recommendation also recommended, however, that enforcement be subject to a protective order respecting confidential customer records. The magistrate further recommended that the parties be allowed time [REDACTED]  
[REDACTED]  
[REDACTED]

Subsequent to the magistrate's [REDACTED] Report and Recommendation, the parties entered into an agreement (1) specifying procedures under which the agents would review customer records, and (2) providing that the taxpayer would withdraw its request for a protective order (the "Agreement"). The Agreement further narrowed the scope of the Related Summonses by circumscribing the entities with respect to which the taxpayer would be required to produce documents. The Agreement was in the form of a letter dated [REDACTED], from the [REDACTED] which was countersigned by the taxpayer's counsel. The Agreement was not filed with the District Court.

The Agreement provided, inter alia:

[I]t is our understanding that [REDACTED] would be willing to resolve the protective order issue as follows:

a. When producing lists of [REDACTED] for purposes of the IRS creating a statistical sample, [REDACTED] may redact identifying customer information so long as the account number, [REDACTED] date and amount [REDACTED] are included. In the event that the account number is a [REDACTED] number, [REDACTED] may redact the account number but only if it replaces that account number with a unique identifying number that will permit the identification of the specific account should the IRS determine such identification is appropriate. With respect to those summonses that seek customer records relating to tax year [REDACTED], [REDACTED] shall be deemed to have complied with the summons if it produces the records for the following entities: [REDACTED]

• [1]

• • •

Under the terms of this offer, [REDACTED]'s provision of summonsed bad debt information as described in the Magistrate Judge's Report and Recommendation in the manner specified above would constitute full compliance with the summonses for bad debt [REDACTED] information.

██████████, the District Court issued an Order which largely adopted the magistrate's recommended order, which in turn largely followed the United States' Proposed Order. The District Court's Order provided generally that:

1 The Agreement excluded [REDACTED] included in the Bank  
Summons ([REDACTED]) and  
[REDACTED] financial companies included in the [REDACTED] Summons  
([REDACTED]) (which also had been the subject of  
the separate [REDACTED] Summons), [REDACTED]

.) The Order subsequently entered by the District Court, however, did not exclude these entities.

[REDACTED]

With respect to the [REDACTED] Summons, the District Court's Order provided that:

The Petitioner has voluntarily narrowed the scope of enforcement it seeks for [REDACTED]. The Summons is enforced to the extent that [REDACTED] is ordered to produce all summonsed records relating to the loans identified in the statistical sample attached to [REDACTED] [the [REDACTED] Summons as modified by the Proposed Order].

With respect to the [REDACTED] Summons, the District Court's Order provided that:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On [REDACTED], the taxpayer delivered a letter to the exam team which stated that pursuant to the District Court's Order, "the summonsed records for [REDACTED]'s taxable years [REDACTED] and [REDACTED] are hereby being produced." The letter further stated that the records were currently available for inspection and copying at specified sites in [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. With respect to each location, the letter listed the general types of records available at the location and the affiliates to which the records related.

On [REDACTED], members of the exam team met with the taxpayer and received various documents, including listings of under \$ [REDACTED] for a number of entities and privilege logs for documents withheld. The documents received included listings of under \$ [REDACTED] for [REDACTED] for [REDACTED] and [REDACTED] of [REDACTED]. Based on their preliminary review of the documents received from the taxpayer, however, the exam team determined that not all of the required records had been produced. On [REDACTED], the exam team notified the taxpayer that it had not received certain records, including, inter alia, listings of the under \$ [REDACTED] for [REDACTED] for [REDACTED], and [REDACTED] of [REDACTED].

By a letter dated [REDACTED], the taxpayer provided certain additional documents, including listings of under \$ [REDACTED] for [REDACTED] (mostly in the form of general ledger print-outs) for [REDACTED], and [REDACTED] (including [REDACTED]). The letter indicated that the general ledger information had been "inadvertently retained on the [REDACTED] [the [REDACTED]] rather than placed with the materials that you took to the [REDACTED] [the exam team's work area]." The letter stated that the following documents were attached:

Exhibit 2: General ledger information responsive to your request for a listing of [REDACTED] bad debt [REDACTED] under \$ [REDACTED] for [REDACTED] and [REDACTED]. This information was inadvertently retained on the [REDACTED] rather than placed with the materials that you took to the [REDACTED].

Exhibit 3: General ledger information responsive to your request for listing of [REDACTED] and [REDACTED] bad debt [REDACTED] (including [REDACTED]) under \$ [REDACTED] for [REDACTED] and [REDACTED]. This information was inadvertently retained on the [REDACTED] rather than placed with the materials that you took to the [REDACTED].

On [REDACTED], the exam team provided [REDACTED] with a statistical sample of the installment [REDACTED] for [REDACTED] of [REDACTED]. This was the first sample provided to the taxpayer pursuant to the procedures set forth in the Court's Order respecting the [REDACTED] Summons. It was also the only statistical sample provided relative to the entities included in the [REDACTED] Summons. The exam team was unable to select statistical samples of the under \$ [REDACTED] of most of the [REDACTED] for [REDACTED] due to the form and type of the information provided by the taxpayer, or, in some cases (e.g., [REDACTED]), because the population of under \$ [REDACTED] was too small for a valid statistical sample. Accordingly, for most of the [REDACTED], the exam team ultimately provided the taxpayer with judgment samples rather than statistical samples. Specifically, judgment samples of under \$ [REDACTED] for [REDACTED] were provided to the taxpayer for [REDACTED], [REDACTED], and [REDACTED] (commercial loans) on [REDACTED]; for [REDACTED] on [REDACTED]; for [REDACTED] and [REDACTED] on [REDACTED]; and for [REDACTED] (including the remaining charge-offs of [REDACTED]), [REDACTED], and [REDACTED] on [REDACTED]. There was, and continues to be, a disagreement between the parties as to whether the information supplied by the taxpayer to date with respect to the under \$ [REDACTED] of the [REDACTED] satisfies requirements of the Court's Order.

#### DISCUSSION

[REDACTED]'s Form 1120 for the taxable year [REDACTED] was filed on [REDACTED]. Accordingly, but for the filing of the action to enforce the designated and related summonses, the general three-year statute of limitations on assessment of section 6501(a) for the taxable year [REDACTED] would have expired on [REDACTED].

Section 6503(j)(1) provides that:

If any designated summons is issued by the Secretary with respect to any return of tax by a corporation, the running of any period of limitations provided in section 6501 on the assessment of such tax shall be suspended -

(A) during any judicial enforcement period --

(i) with respect to such summons, or

(ii) with respect to any other summons which is issued during the 30-day period which begins on the date on which such designated summons is issued and which relates to the same return as such designated summons, and

(B) if the court in any proceeding referred to in paragraph (3) requires any compliance with a summons referred to in subparagraph (A), during the 120-day period beginning with the 1st day after the close of the suspension under subparagraph (A).

If subparagraph (B) does not apply, such period shall in no event expire before the 60th day after the close of the suspension under subparagraph (A).

Section 6503(j)(3) defines the term "judicial enforcement period" as the period:

(A) which begins on the day on which a court proceeding with respect to such summons is brought, and

(B) which ends on the day on which there is a final resolution as to the summonsed person's response to such summons.

In the present case, [REDACTED]'s Form 1120 for the taxable year [REDACTED] was filed on [REDACTED]. Accordingly, but for the filing of the action to enforce the designated and related summonses, the general three-year statute of limitations on



assessment of section 6501(a) for the taxable year [REDACTED] would have expired on [REDACTED]. The statute of limitations was suspended, however, beginning on [REDACTED], when the petition to enforce the Related Summonses was filed and the judicial enforcement period began. The judicial enforcement period will end "on the day on which there is a final resolution as to the summonsed person's response to such summons." As the Court ordered compliance with the Related Summonses, the statute of limitation will remain suspended for 120 days after the end of the judicial enforcement period. At the end of the 120 day period, [REDACTED] days will remain on the statute of limitation as [REDACTED] days remained on the statute at the time the enforcement action was filed. The issue as to which there is doubt in this matter is when does the judicial enforcement period end, or, more specifically, when has there been "a final resolution as to the summonsed person's response to such summons."

There are no reported cases addressing what constitutes "final resolution" of a summonsed person's response to a designated or related summons."<sup>2</sup> The only authority we are aware of respecting the meaning of the phrase is contained in the legislative history of section 6503(j). The Conference Committee Report on the Omnibus Budget Reconciliation Act of 1990 states the following with respect to the period during which the statute of limitations is suspended under the designated summons provision:

The statute of limitations is suspended for the period that commences when a lawsuit is brought in court to either enforce or quash the designated summons and ends on the date there is a final resolution of the summonsed person's response to the summons. For these purposes, the term "final resolution" means the same as it does in section 7609(e)(2)(B). In general, this means that no court proceeding remains pending and that the summonsed person has complied with the summons to the extent required by the court.

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<sup>2</sup> I.R.C. § 7609(e)(2)(B) contains a provision similar to I.R.C. § 6503(k)(3)(B) which suspends the statute of limitations on assessment for a period beginning on the date six months after the issuance of certain third-party recordkeeper summonses and "ending with the final resolution of such response [of the third-party recordkeeper]." We have been unable to locate any case law or other authority addressing the meaning of the term "final resolution" as used in section 7609(e)(2)(B).

H.R. Conf. Rep. No. 964, 101<sup>st</sup> Cong., 2<sup>nd</sup> Sess. (1990), 1991-2 C.B. 560, 579 (emphasis added).

(b)(7)a, (b)(5)(AC)  
(b)(7)a, (b)(5)(AC)  
[REDACTED]  
(b)(7)a, (b)(5)(AC)

(b)(7)a, (b)(5)(AC)  
(b)(7)a, (b)(5)(AC)  
[REDACTED]  
(b)(7)a, (b)(5)(AC)

(b)(7)a, (b)(5)(AC)  
(b)(7)a, (b)(5)(AC)  
[REDACTED]  
(b)(7)a, (b)(5)(AC)

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Even if it were determined that the Service failed to fully comply with the Order, it does not necessarily follow that such failure would end the taxpayer's obligations under the Order to provide [REDACTED] files for the [REDACTED] ultimately selected by the Service.

The second possible date is [REDACTED] when the taxpayer provided listings of under \$ [REDACTED] for [REDACTED], [REDACTED] and [REDACTED] (including non-commercial). Per the taxpayer's letter these lists had been "inadvertently retained on the [REDACTED] [i.e., in the [REDACTED]] rather than placed with the materials that you took to the [REDACTED] [i.e., in the exam team's work area]." If [REDACTED], was the date of "final resolution," we calculate that the statute of limitations would expire on [REDACTED] ([REDACTED] days plus [REDACTED] days after [REDACTED]).

CONCLUSION

(b)(7)a, (b)(5)(AC)  
(b)(7)a, (b)(5)(AC)

[REDACTED]

[REDACTED]

[REDACTED]

(b)(7)a, (b)(5)(AC)

If you have any questions respecting this matter, please call Jack Forsberg at 290-3473, ext. 227.

REID M. HUEY  
District Counsel

/s/ Jack Forsberg

By;

JACK FORSBERG  
Special Litigation Assistant

cc: Assistant Chief Counsel  
(Field Service)